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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	M	ATTY. BOOKENDER
09/241,825	02/01/99	LYTE		

HM12/0625

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EXAMINER
LILLING, H

ART UNIT	PAPER NUMBER
1651	2

DATE MAILED: 06/25/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 2-1-99
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire TWO month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above, claim(s) 3-22 is/are withdrawn from consideration.
- ☒ Claim(s) 1-2 is/are allowed.
- ☐ Claim(s) is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

09/241,825

Art Unit: 1651

Status of the Claims

1. Claims 1-22 have now been presented for examination.

This Application is a reissue of U.S. Patent 5,629,349 issued 13 May 1999.

Reissue Applications

2. New claims 3-22 are drawn to an invention which is not considered to conform to the same general invention as the original patent. That is, claims 3-22 are drawn to patentably distinct inventions. The originally claimed inventions, Claims 1-2, are drawn to a method of "suppressing the growth of... bacteria..."(Claims 3-11) which inventions are directly opposite to Claims 3-22 which are drawn to "enhancing the growth of bacteria.." (Claims 12-22) and "harvesting the by-products of enhance growth of bacteria..".

In addition, there was absolutely no search and examination of any aspect to any methods of enhancing the growth of bacteria which methods are completely different from the allowed claimed methods of suppressing the growth of bacteria. In view of the fact that it is well considered in the art that enhancing the growth cannot meet the claimed limitation of suppressing the growth of bacteria, the claims do not generally conform to the general invention as originally elected and allowed in the original patent.


Art Unit: 1651

These patentably distinct inventions, Claims 3-22), would have been restricted along with the other inventions as set forth in the restriction election in the Office action of 31 January 1995, had they been presented at that time for the reasons above and further. It is not the purpose of reissue to recapture claimed subject matter deliberately canceled in an application to obtain a patent or to claim subject matter that is patentably distinct from the allowed claimed subject matter. It is safe to assume that had claims 3-22 been originally presented, they would have been restricted and ultimately canceled prior to issue. Accordingly, claims 3-22 are withdrawn from further consideration on the merits. Claims 1-2 which have not been amended. Thus, there are no issues to be considered on the merits for this instant application.

3. The amended claims 3-22 have not been entered as they do not conform to 37 CFR 1.121(b).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is (703) 308-2034 and fax number (Art Unit 1651) is (703) 305-7939 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL
(703) 308-2034
Art Unit 1651
June 22, 1999


HERBERT J. LILLING
PATENT EXAMINER
GROUP 1600 ART UNIT/1651